

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SECTEK, INC.
Employer

and

5-RC-15727

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
Petitioner

and

UNITED UNION OF SECURITY GUARDS
Intervenor

Stan P. Simpson, Esq., of Washington, D.C. for the Regional Director.
Gary Marx, Esq., (*Marx & Lieberman*), Washington, D.C., for the Employer.
Thomas J. Hart, Esq., (*Slevin & Hart*), Washington, D.C., for the Intervenor.
Mark Heinen, Esq., (*Gregory, Moore, Jeakle, Heinen & Brooks*), Detroit, Michigan,
for the Petitioner Union.

RECOMMENDED DECISION ON OBJECTIONS

ARTHUR J. AMCHAN, Administrative Law Judge, Pursuant to a September 29, 2004 Report on Objections and Notice of Hearing, I heard evidence in this matter on October 8, 2004 in Washington, D.C.

This case arises pursuant to the Intervenor's objections to an August 25, 2004 secret ballot election in an appropriate unit of all full-time and regular part-time security officers, including sergeants, employed by the employer at the Internal Revenue Service (IRS) facilities located at 1401 Constitution Avenue, N.W., Washington, D.C. and 5000 Ellin Road, New Carrollton, Maryland. The employees chose to be represented by the Petitioner Union by a vote of 44 to 29. The Intervenor had been the incumbent labor organization. The Intervenor filed objections to conduct affecting the results of the election. More specifically, the Intervenor contends that supervisors distributed a notice regarding health benefits offered by the Petitioner and by so doing indicated that it favored the Petitioner and thus destroyed the laboratory conditions required for a valid representation election under Board law.

Based on the entire record before me, include the testimony at the hearing, the documentary evidence, as well as the oral arguments at the conclusion the hearing,¹ I make the following findings, conclusions and recommendations:

¹ The parties, after being offered the opportunity to file briefs, opted to make oral concluding statements in lieu of briefs.

I believe that the transcript at page 44, line 21 incorrectly contains the word "demoted" rather than "promoted" in regard to the change in status of George Anwuri. I infer this from notes I took at trial and the context of the testimony.

The Employer provides security services at the aforementioned Internal Revenue Service installations in the Washington, D. C. area. The petitioner filed a representation petition on May 12, 2004. A Stipulated Election Agreement was approved on May 28, 2004, and a secret ballot election was conducted under the supervision of the Regional Director on August 25, 2004.

In mid-August 2004, Dennis Roberts, a representative of the Employer, who oversees the Employer's project managers at the Internal Revenue Service facilities, held an "all-hands" meeting. It is unclear how many bargaining unit members attended the meeting. However, at the meeting Mr. Roberts told employees that the Employer was neutral vis-à-vis the Intervenor, which was the incumbent union, and the Petitioner.

On the afternoon of August 23, two days before the election, George Anwuri, a management employee, and an agent of the Employer, handed a document to Shadawn Wright, a bargaining unit member, then functioning as an acting supervisor. Anwuri told Wright to pass the document out to bargaining unit members at a guard mount the following morning. Some unknown person in the Employer's office at New Carrollton faxed the document to the Washington, D.C. office.

Anwuri said nothing else about the document or about either union. Officer Wright passed the document out the next morning, the day before the election, to about ten security guards who are bargaining unit members. She said nothing to the guards about the document when she passed it out. The next day Wright served as an election observer for the Intervenor.

Wright also passed the document along to a Lt. Jallo (or Jalloh), a supervisor, who distributed it at another guard mount later that day. Jallo told the guards to look the document over. The document in question is a notice, on the letterhead of Humanomics, Inc., the Petitioner's insurance broker. It is addressed to SECTEK Security Professionals and states:

Humanomics, Inc. is an insurance services company who is the sole designated benefits consultant for the SPFPA International Union. We identify the best insurance companies and plan designs for its members and make it happen. Our understanding is that you currently are provided a Blue Cross/Blue Shield Care First PPO plan from another union. The same plan can be switched to the SPFPA sponsorship. Humanomics would handle the transfer.

So, in your decision regarding who should represent you, the benefits should not be an issue.

Gary Hasenbank
Vice President, Solutions Center
Humanomics, Inc.

Additionally, in June or July 2004, Fred Bryant, a bargaining unit member, heard Mike Spray, then the Employer's project manager, state that employees weren't being properly represented and needed to look into getting a new union. Prior to the election, a Mr. Jobe replaced Spray as the employer's project manager. Although Spray's remark was directed to a group of guards, it is not clear how many employees were in the group. Bryant also testified that on one occasion he saw a representative of the Petitioner inside the IRS building, who was not wearing a security pass, as required by the Employer. It is not clear who allowed the representative into the building or whether the representative did or did not have authorization to be inside the building.

Applicable Legal Principles

Employer or union conduct is objectionable if it disrupts the laboratory conditions of the election and has the tendency to interfere with the employees' freedom of choice, *Cedars-Sinai Medical Center*, 342 NLRB No. 58 (2004) (slip op. 2); *Stephenson Equipment Company*, 174 NLRB 865 (1969). This is an objective standard, as opposed to a subjective inquiry as to whether employees' freedom of choice was in fact affected. The Board will ordinarily overturn the election and order a second election, unless the misconduct is *de minimis*, such that it is virtually impossible to conclude that the election outcome has been affected, *Bon Appetit Management Co.*, 334 NLRB 1042, 1044 (2001).

The factors the Board considers significant in determining whether misconduct is sufficient to require a new election are: (1) the number of incidents of misconduct; (2) the severity of the incidents and whether they were likely to cause fear among employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to misconduct; (4) the proximity of the misconduct to the election; (5) the degree of persistence of the misconduct in the minds of bargaining unit members; (6) the extent of dissemination of the misconduct among bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party.

Applying these principles to the instant case, I conclude that the Employer's misconduct in distributing the health insurance broker's notice was *de minimis* and that it is virtually impossible to conclude that it affected the outcome of the election. Assuming there was misconduct herein on the day before the election, it was hardly severe. The employer did not indicate a preference for the Petitioner over the Intervenor. At worst, the Employer indicated to employees that their health benefits would likely remain unchanged if they selected the Petitioner as their collective bargaining representative. Moreover, the employer engaged in little or no other misconduct. Additionally, it affirmatively declared its neutrality to employees in a meeting.

The Employer, by relatively low-level supervisors, distributed the health insurance notice to approximately 20 of the 125 eligible voters the day before the election. The Petitioner won the election by a margin of 44 votes to 29 votes. Given the borderline quality of the Employer's alleged misconduct, I conclude that it is virtually impossible to conclude that the Petitioner would not have prevailed had the Employer not assisted it in distributing the notice regarding health insurance, *Sutter Roseville Medical Center*, 324 NLRB 218 (1997).

As to other matters raised by the testimony of Fred Bryant, I reach a similar conclusion. So far as Michael Spray expressed disapproval of the Intervenor, this was counteracted by the subsequent declaration of neutrality by Dennis Roberts, a higher-ranking official of the Employer. Moreover, there is no evidence that Spray expressed a preference for the Petitioner or that his comments were made to anyone other than Bryant, a supporter of the Intervenor, and a few other bargaining unit members. The record establishes that Spray had been replaced as the Employer's project manager at the relevant IRS facilities prior to the August 25 election. Thus, there is no reason to believe that employees feared retaliation from Spray or any other agent of the Employer if they chose to retain the Intervenor as their collective bargaining representative.

Bryant's testimony concerning the presence in the IRS facility of a representative of the Petitioner does not establish that this representative was not authorized to be in the facility or that the Employer breached its pledge of neutrality by letting this individual into the building.

Finally, as to George Anwuri's role in the distribution of the insurance memo, there is no evidence that anyone, other than Shadawn Wright, was aware that Anwuri had instructed Wright to distribute the notice to bargaining unit members. However, employees would reasonably have concluded that the Employer was allowing the distribution of the notice. Nevertheless, for the reasons previously stated, I conclude that employees' free choice in the selection of their collective bargaining representative was not compromised.

Conclusion

I overrule the Intervenor's Objection to Conduct Affecting the August 25, 2004 election and recommend that the Board certify the Petitioner as the exclusive collective bargaining representative of the Employer's full-time and regular part-time security officers, including sergeants, employed by the Employer at the Internal Revenue Service facilities located at 1401 Constitution Avenue, Washington, D.C. and 5000 Ellin Road, New Carrollton, Maryland, but excluding all other employees, captains, lieutenants, professional employees, managerial employees and supervisors as defined in the Act.²

Dated, Washington, D.C. October 22, 2004

Arthur J. Amchan
Administrative Law Judge

² Pursuant to Section 102.69 of the Board's Rules and Regulations, any party may, within fourteen (14) days from the date of this recommended decision, file with the Board in Washington, D.C., an original and eight (8) copies of exceptions thereto. Immediately upon the filing of exceptions, the party filing them shall serve a copy of the other parties and shall file a copy with the Regional Director of Region 5. If no timely exceptions are filed, the Board will adopt the recommendations set forth herein.